

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9065 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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CJ NEW HIGH SCHOOL TRUST - Petitioner(s)**Versus****NATUBHAI CHHAGANBHAI & 2 - Respondent(s)**

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
 RULE SERVED for Respondent(s) : 1 - 3.
 MR BIPIN P JASANI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 28/12/2005****ORAL JUDGMENT**

1. This petition is directed against the award dated 19th May 2004 passed by the Labour Court, Navsari in Reference (LCN) Nos.60 to 62 of 1997 whereby the Labour Court directed the petitioner to reinstate the

respondents on their original post along with 35% back wages.

2. The short facts of the case are that the respondents were employed on honorary basis as peon as there was no sanctioned post of peon in the primary school. The respondents demanded pay scale as is given to the regular employees of secondary school. Since the petitioner has refused, the respondents stopped working and for a period of five months and 27 days continuously they did not work. A notice was given to the respondents, but in spite of that they have refused to do the work. Ultimately the petitioner terminated the services of the respondents. The respondents, therefore, raised a dispute which was referred to the Labour Court, Navsari, and the Labour Court passed the award as stated hereinabove.

3. Mr. Clerk for the petitioner submitted that the Labour Court has committed an error in holding that section 25-F of the Industrial Disputes Act was not complied with. He submitted that the petitioner has offered notice and notice pay and retrenchment compensation, but respondents refused to accept the same. He further submitted that there was no sanctioned post of peon and therefore the Labour Court ought not to have

passed the award in question.

4. Learned counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case and therefore this Court may not interfere with the impugned award.

5. As a result of hearing and perusal of the record, I am of the view that the Labour Court has given cogent and convincing reasons for granting reinstatement. The Labour Court has recorded that the petitioner has not followed the provisions of section 25F of the Act. Learned counsel for the petitioner is not able to controvert this aspect of the matter. I am in complete agreement with the reasonings adopted and findings recorded by the Labour Court in so far as reinstatement is concerned.

6. However, the Labour Court has granted back wages without giving any reasons and only as a matter of course. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of

General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order.

7. In the premises aforesaid, this petition is partly allowed. The award granting back wages is quashed and set aside. The rest of the award is confirmed. The award of the Labour Court is modified to the aforesaid extent. The respondents will be reinstated on or before 1.1.2006 with continuity of service. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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